

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

KLEEN PRODUCTS LLC, et al.
individually and on behalf of all those
similarly situated,

Plaintiff,

v.

PACKAGING CORPORATION OF
AMERICA, et al,

Defendants.

Civil Case No. 1:10-cv-05711

Hon. Milton I. Shadur

JOINT STATUS CONFERENCE REPORT NO. 2

Plaintiffs and Defendants submit this joint report for the Court's consideration at the status conference scheduled for December 15, 2011 at 9:00 a.m. (rescheduled from November 16, 2011) before the Hon. Milton I. Shadur. As noted below, there are several discovery issues as to which the parties have not reached agreement and that may result in motion practice. Plaintiffs' and Defendants' respective positions on these issues will be set forth in separate statements that the parties will file today.

A. Preliminary Statement

Kleen Products LLC (Case No. 1:10-cv-05711), the first-filed case in these consolidated actions, was filed on September 9, 2010 and the related later-filed cases were subsequently reassigned to this Court. On November 8, 2010, Plaintiffs filed a Consolidated and Amended Complaint ("Complaint") (Dkt. 65). On January 14, 2011, Defendants filed motions to dismiss.

On April 8, 2011, the Court entered a memorandum Opinion and Order denying Defendants' motions (Dkt. 193). On May 2, 2011, Defendants filed their Answers.¹

On May 9, 2011, the Court held a status conference and indicated its preference that counsel establish a case management schedule amongst themselves and that issues requiring Court intervention be handled by noticed motion. The Court also said that it would set periodic status conferences. The Court conducted another status conference on August 16, 2011. Prior to the August status conference, the parties submitted a joint status conference statement (Dkt. 222), and at the status conference the Court requested that the parties continue that practice, stating that it would review the joint status conference statements in advance and unless the Court advised otherwise, counsel would not have to appear and another status conference date would be calendared.² At the August 16, 2011 status conference the Court scheduled a status conference for November 16, 2011 which was continued upon court order and by agreement of the parties until December 15, 2011.

Since the last status conference, Foley & Larder LLP (James T. McKeown, Michael M. Conway, G. Michael Halfenger, and Joanne Lee) have replaced Gibson Dunn & Crutcher (George A. Nicoud, Daniel Nelson, Austin Schwing, Rebecca Justice Lazarus, Robert Kim, Joel Willard, and Casey N. Carrington) as counsel for Defendant International Paper Company. Eimer Stahl Klevorn & Solberg (Nathan P. Eimer) will continue as counsel for International Paper. (Dkt. 248 & 250).

In the following report the parties present the Court with a summary of the current status of the case, including an identification of the open issues.

¹ Pursuant to the unopposed motion of Defendant Smurfit Stone (Dkt. 202), on June 16, 2011, the Court allowed RockTenn CP, LLC to be substituted as a defendant in place of Smurfit-Stone Container Corp (Dkt. 205).

² Transcript of Proceedings, August 16, 2011, pp. 6:19-7:28.

B. Disclosures and Discovery

1. Rule 26 (A) Disclosures

Plaintiffs and Defendants served their initial disclosures on February 11, 2011 and February 10, 2011, respectively.

2. Confidentiality and Expert Witness Stipulations and Orders

The Court has entered stipulated Orders regarding the confidentiality of documents and other materials produced in discovery (Dkt. 227) and procedures regarding certain aspects of expert discovery (Dkt. 229).

3. Production Protocols for Electronically Stored Information (“ESI”) and Paper Documents

On October 26, 2011, the Court entered a stipulated Order governing the production format of e-mail, e-files and paper documents as well as related matters. (“Production Format Order”) (Dkt. 245).

4. Discovery

a. Plaintiffs’ First Request for Production of Documents Directed to All Defendants.

Plaintiffs’ First Request for Production of Documents Directed to All Defendants (“P1-RPD”) was served on May 3, 2011 and Defendants each served Responses and Objections on June 6, 2011. Defendants began producing responsive hard copy documents on August 11, 2011, at which time they collectively produced approximately 118,000 pages.

Beginning November 1, 2011, each of the Defendants has made at least one additional production, with many of the documents produced in native format.³ The Defendants estimate that to date they have collectively produced more than one million pages of documents. The

³ See ESI Protocol, Section IV (C) at p. 7, regarding native files.

Defendants estimate that they have additional millions of pages of documents that they intend to produce on a rolling basis.

b. Defendants' Document Requests to Plaintiffs

Defendants' First Set of Requests to Plaintiffs for the Production of Documents ("D1-RPD") was served on May 6, 2011; Plaintiffs served their responses and objections on June 10, 2011. Plaintiffs began producing the class representatives' paper documents⁴ on August 10, 2011 and completed production on November 1, 2011. Plaintiffs are presently preparing to search class representatives' ESI with content-based search technology (*see* below).

c. Plaintiffs' Interrogatories and Request for Production to Georgia Pacific

On October 25, 2011, Plaintiffs served additional interrogatories ("P1-INT") and RPDs ("P2-RPD") on Defendant Georgia Pacific directed to certain defenses raised in its Answer (Dkt. 199, *ftn.* pp. 2-3). Georgia Pacific served its objections and responses on P1-INT and P2-RPD on November 29, 2011.

d. Plaintiffs' 30(b)(6) Notices to All Defendants

On November 2, 2011, Plaintiffs served 30(b)(6) notices on each of the Defendants relating to document preservation and information systems.⁵ During the parties' meet-and-confer on November 16, 2011, the parties agreed that Defendants would provide the information sought in the 30(b)(6) notices by written responses, the depositions would be deferred pending review of those responses and Plaintiffs would consider in good faith whether the responses obviated the need for depositions. On November 30, 2010, Weyerhaeuser

⁴ See ESI Protocol, Section II at p. 4, regarding production of paper documents.

⁵ See Dkt. 222, first Joint Status Conference Report, p. 2, section B(1) reporting on the parties discussions beginning in December 2010 regarding these and other issues.

submitted its written response, and the remaining Defendants are in the process of preparing written responses.

e. Plaintiffs' Third Party Subpoenas

(i) Beginning on July 15, 2011, Plaintiffs served approximately 19 subpoenas on third parties, including trade associations, financial analysts and institutions, market information providers and consulting firms referenced in the Complaint. A number of these third parties have begun producing documents and others are engaged in on-going negotiations which primarily concern scope and costs.

(ii) In July 2011, Plaintiffs served 2 additional subpoenas on certain third parties involved in the RockTenn - Smurfit Stone merger (Lazard, Levin Group). Lazard has completed its production of approximately 75,000 pages of documents and the Levin Group made a supplemental production on November 4, 2011.

(iii) In September 2011, certain third party investment banks involved in the pending International Paper ("IP") and Temple Inland ("TIN") merger (Evercore, UBS and Goldman Sachs) were subpoenaed. UBS has produced certain documents. Plaintiffs, the third parties (and IP) continue to negotiate the timing and scope of those productions.

f. Meet-and-confers

The parties have continued to engage in meet-and-confer sessions in an effort to resolve outstanding discovery issues, including most recently on November 16, 2011. While other issues remain unresolved, four significant issues, which are addressed in the separate submissions of the Parties, are: (i) Plaintiffs' proposal for Defendants to create indexes of the documents Defendants produce; (ii) ESI search methods, (iii) scope of document searches, and

(iv) relevant time periods. Plaintiffs and Defendants will separately submit to the Court their statements on each of these issues.

C. CONCLUSION

The parties request that the next status conference be scheduled for the week of February 9, 2012 and approximately each 45 days thereafter until circumstances change.

Dated: December 13, 2011

Respectfully submitted,

/s/ Michael J. Freed

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Report only, on behalf of Defendants
PACKAGING CORPORATION OF AMERICA;
CASCADES CANADA, INC.;
INTERNATIONAL PAPER COMPANY;

NORAMPAC HOLDINGS U.S. INC.;
WEYERHAEUSER COMPANY; GEORGIA
PACIFIC LLC; TEMPLE-INLAND INC.; and
ROCKTENN CP, LLC

CERTIFICATE OF SERVICE

The undersigned certifies that on December 13, 2011, a true and correct copy of the foregoing **Joint Status Conference Report No. 2** was electronically filed with the Clerk of the Court for the Northern District of Illinois using the Court's CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Nathan P. Eimer

Nathan P. Eimer
An Attorney for Defendant International
Paper Company